

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW SIMPSON,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO  
WITHDRAW AS COUNSEL

Case No. 2:08-CR-733 TS

This matter is before the Court on Benjamin D. Gordon's Motion to Withdraw as Counsel. Counsel has filed a Notice of Appeal on behalf of Defendant and now seeks to withdraw because Defendant's appeal alleges ineffective assistance of counsel.

Counsel is obligated to continue his representation of Defendant unless and until permitted to withdraw by the Tenth Circuit.<sup>1</sup> The action to be taken in this Court would be the filing of a motion and accompanying documents in order to have Defendant declared *in forma pauperis* and accordingly eligible for the appointment of counsel at public expense and to

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<sup>1</sup>Tenth Cir. R. 46.3(A) ("An attorney who files a notice of appeal in a criminal case . . . has entered an appearance in this court and may not withdraw without the court's permission.").

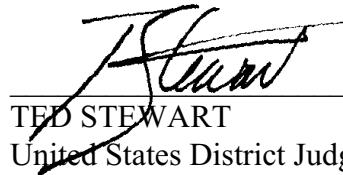
proceed without payment of the filing and docketing fees. Counsel may then file a motion to withdraw with the Tenth Circuit in compliance with Tenth Cir. R. 46.4 and to ask the Tenth Circuit to appoint counsel to represent Defendant on appeal. "Prior to filing a proper motion to withdraw under 10th Cir. R. 46.4 counsel must perfect the appeal, which includes filing all preliminary documents."<sup>2</sup>

It is therefore

ORDERED that Counsel's Motion to Withdraw as Counsel (Docket No. 98) is DENIED.

DATED September 24, 2010.

BY THE COURT:



TED STEWART  
United States District Judge

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<sup>2</sup>*Id.*